



MAIL STOP APPEAL
BRIEF - PATENTS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: V. Hansen Attorney Docket No. PRBU115349
Application No.: 09/607,502 Group Art Unit: 3624
Filed: June 28, 2000 Examiner: N. Subramanian
Title: SYSTEM AND METHOD FOR MANAGING AND EVALUATING
NETWORK COMMODITIES PURCHASING

TRANSMITTAL OF APPEAL BRIEF

Seattle, Washington 98101

March 24, 2005

TO THE COMMISSIONER FOR PATENTS:

Enclosed herewith for filing in the above-identified application is an Appeal Brief. Also enclosed is our Check No. 162298 in the amount of \$250.00. The Commissioner is hereby authorized to charge any fees under 37 C.F.R. §§ 1.16, 1.17 and 1.18 which may be required during the entire pendency of the application, or credit any overpayment, to Deposit Account No. 03-1740. This authorization also hereby includes a request for any extensions of time of the appropriate length required upon the filing of any reply during the entire prosecution of this application. A copy of this sheet is enclosed.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid and addressed to **Mail Stop Appeal Brief-Patents**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the below date.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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APPELLANT'S APPEAL BRIEF

Seattle, Washington
March 24, 2005

TO THE COMMISSIONER FOR PATENTS:

A Notice of Appeal was filed in the above-identified application on February 25, 2005. Applicant/appellant is appealing the final decision, dated November 10, 2004, of the Primary Examiner rejecting Claims 1-36 that are pending in the application. This appeal brief is submitted in support of the Appeal.

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I. REAL PARTY IN INTEREST

The subject application is owned by ProBuild, Inc., a Wisconsin corporation, as recorded in the U.S. Patent and Trademark Office on August 29, 2001, at Reel 012116, Frame 0316.

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II. RELATED APPEALS AND INTERFERENCES

Upon information and belief, there are no appeals, interferences, or judicial proceedings that may be related to, directly affect, be directly affected by, or have a bearing on the decision of the Board of Patent Appeals and Interferences (hereinafter "Board") in the present appeal.

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III. STATUS OF CLAIMS

The present application was filed on June 28, 2000. The first Office Action issued on December 19, 2002, and was followed by an Examiner interview conducted March 5, 2003 and an amendment filed March 19, 2003 amending Claims 1-3, 10-18, 24-32, and 35-36. A final Office Action thereafter issued on June 10, 2003, which was followed by a Request for Reconsideration filed on August 27, 2003. After an Advisory Action and an interview with the Examiner on October 8, 2003, applicant filed a Request for Continued Examination on October 10, 2003, with an amendment of Claims 1-2, 13-18, and 26-36.

The first Office Action after the RCE, dated November 6, 2003, was followed by an Examiner interview conducted January 26, 2004, and an Amendment dated February 17, 2004, amending Claims 1, 15, 18, 29, and 32-36. This was followed by a final Office Action dated May 18, 2004, an Examiner interview conducted on June 10, 2004, an Amendment dated July 19, 2004 amending Claims 1, 18, and 32, and a further final Office Action dated November 10, 2004, which is the subject of the present appeal.

The application as filed included Claims 1-36. All 36 Claims remain pending in the application in either their original form or amended as noted above. There are no claims in the application that are canceled, withdrawn, objected to, or allowed. Claims 1-36 stand rejected based on prior art as discussed herein.

Claims 1-36, which are the subject of the present appeal, are set forth in their entirety in Section VIII (Claims Appendix).

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IV. STATUS OF AMENDMENTS

No amendments to Claims 1-36 have been filed subsequent to the Final Office Action dated November 10, 2004. All prior amendments have been entered into the record.

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V. SUMMARY OF CLAIMED SUBJECT MATTER

Embodiments of the invention claimed in the present application provide a system and method for commodities purchasing over a network of distributed computing devices. In one embodiment, a plurality of buyers are able to generate requests for quotes. In response to a request for quote, a buyer may receive quotes with offered prices from a plurality of sellers. A price comparison routine provided by the present invention enables buyers to evaluate and compare prices offered in different quotes for commodity products having different evaluation parameters. The price comparison routine produces a comparison value indicative of a ratio of an offered price and a market price of the commodity products in a quote. The comparison value facilitates a buyer's evaluation of different quotes that may include similar but unequal products, whose value in relationship to each other may shift dynamically with changing market conditions.

The present application includes three independent claims: Claim 1, Claim 18, and Claim 32. In accordance with 37 C.F.R. § 41.37(v), the following is a concise explanation of the subject matter defined in each of the independent claims involved in the appeal.

Claim 1

Claim 1 is directed to a method for calculating price data in which at least one comparison value is generated for comparing different quotes from sellers. The claimed method may be implemented in an arrangement comprising a plurality of agents connected to a network, wherein the plurality of agents includes at least one server, at least one buyer agent, and at least one seller agent.

The claimed method comprises receiving at least one request for quote from a buyer agent, wherein the request for quote includes a product specification data set. (Specification, page 7, line 13 to page 9, line 7; Figure 5, numerals 501-510, and Figure 8A.) The product

specification data set is transmitted to at least one seller agent (Specification, page 9, lines 22-27; Figure 6A, numeral 601), after which a price data set is received from the seller agent. (Specification, page 9, lines 27-31; Figure 6A, numeral 603.) The price data set contains at least one quoted value, wherein information in the price data set is responsive to the product specification data set. (Specification, page 9, line 32 to page 10, line 11.)

The method thereafter comprises receiving metric data from at least one source, wherein the metric data represents price data that is indicative of one or more market prices. (Specification, page 10, lines 12-19; Figure 6A, numeral 605, and page 16, lines 3-8; Figure 9, numeral 925.) After receipt of the metric data, at least one comparison value is generated, wherein the comparison value is indicative of a ratio of the quoted value and at least one metric value derived from the metric data. (Specification, page 16, lines 8-20; Figure 9, numerals 930-940.) The comparison value is then communicated to at least one output. (Specification, page 10, lines 28-34; Figure 6A, numeral 607, and Figure 8B.)

Claim 18

Claim 18 is directed to a method for providing services that includes generating and communicating at least one comparison value for depiction on a buyer client computer. The claimed method may be implemented in an arrangement comprising a plurality of computers connected to a network, wherein the plurality of computers includes at least one server, at least one buyer client computer, and a plurality of seller client computers.

The method claimed comprises providing a browsable display describing at least one service and features for allowing a buyer associated with a buyer client computer to provide a request for quote. (Specification, page 7, line 13 to page 9, line 7; Figure 5, numerals 501-510, and Figure 8A.) Thereafter, at least one request for quote is received from the buyer client computer, wherein the request for quote includes a product specification data set. (Specification,

page 9, lines 5-7; Figure 5, numeral 513.) The product specification data set is then transmitted to at least one of the plurality of seller client computers. (Specification, page 9, lines 22-27; Figure 6A, numeral 601.)

A plurality of price data sets are thereafter received from the plurality of seller client computers. (Specification, page 9, lines 27-31; Figure 6A, numeral 603.) The plurality of price data sets are responsive to the transmitted product specification data set and contain at least one quoted value. (Specification, page 9, line 32 to page 10, line 11.)

The method further comprises receiving metric data from at least one source, wherein the metric data represents price data that is indicative of one or more market prices. (Specification, page 10, lines 12-19; Figure 6A, numeral 605, and page 16, lines 3-8; Figures 9, numeral 925.) At least one comparison value is then generated, wherein the comparison value is indicative of a ratio of the at least one quoted value and at least one metric value derived from the metric data. (Specification, page 16, lines 8-20; Figure 9, numerals 930-940.) The comparison value is then communicated for depiction on the buyer client computer. (Specification, page 10, lines 28-34; Figure 6A, numeral 607; Figure 8B.)

Claim 32

Claim 32 is directed to an article of manufacture comprising a computer-readable medium. (Specification, page 6, line 32 to page 7, line 1.) The computer-readable medium has computer-executable instructions for providing services, which, when executed by a processor, result in: providing a display describing at least one service on a computing device and features for allowing at least one buyer client computer to provide a request for quote (Specification, page 7, line 13 to page 9, line 7; Figure 5, numerals 501-510; Figure 8A); receiving at least one request for quote from the buyer client computer, wherein the request for quote includes a product specification data set (Specification, page 9, lines 5-7; Figure 5, numeral 513);

transmitting the product specification data set to a plurality of seller client computers (Specification, page 9, lines 22-27; Figure 6A, numeral 601); receiving a plurality of price data sets from the plurality of seller client computers, wherein the price data set contains a quoted value and the plurality of price data sets are responsive to the product specification data set (Specification, page 9, line 27 to page 10, line 11; Figure 6A, numeral 603); receiving metric data from at least one source, wherein the metric data represents price data that is indicative of one or more market prices (Specification, page 10, lines 12-19; Figure 6A, numeral 605, and page 16, lines 3-8; Figure 9, numeral 925); generating at least one comparison value, wherein the comparison value is indicative of a ratio of the quoted value and at least one metric value derived from the metric data (Specification, page 16, lines 8-20; Figure 9, numerals 930-940); and generating an output of at least one comparison value for depiction on the buyer client computer (Specification, page 10, lines 28-34; Figure 6A, numeral 607; Figure 8B).

Claims 2-17 are dependent from Claim 1, Claims 19-31 are dependent from Claim 18, and Claims 33-36 are dependent from Claim 32. Each of the dependent claims encompass additional subject matter of the claimed invention as discussed herein.

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VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-36 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over a combination of four patent references, namely, U.S. Patent No. 5,842,178 that issued to Giovannoli (hereinafter "Giovannoli") in view of U.S. Patent No. 6,058,379 that issued to Odom (hereinafter "Odom"), in view of U.S. Patent No. 5,732,400 that issued to Mandler et al. (hereinafter "Mandler"), and further in view of U.S. Patent No. 5,715,402 that issued to Popolo (hereinafter "Popolo").

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VII. ARGUMENT

This appeal concerns the question of whether the subject matter set forth in Claims 1-36 is legally obvious under 35 U.S.C. § 103(a) in view of a combination of four references, namely, Giovannoli, Odom, Mandler, and Popolo. While the patentability of the claims will be discussed below in greater detail, in order to provide a better understanding and appreciation of the arguments set forth herein, appellant first presents a brief summary of the 35 U.S.C. § 103(a) references. Following that, to provide additional context, appellant presents some brief examples of applications in which the present invention may be implemented.

Giovannoli

Giovannoli discloses a computerized system that supports a network of buyers and vendors for processing requests for quotation for goods and services through at least one central processing unit. Depending on specific aspects of a request for quotation, a filter selects appropriate vendors to receive the request for quotation. Filter conditions may define a class of vendors in terms of geographical location, quantity, language spoken, currency, special conditions of sale, and the like. Responses from the selected vendors are then processed by the central processing unit and submitted to the requesting buyer.

Figure 8 of Giovannoli illustrates an arrangement of data for processing a request for quotation. In this example, the request for quotation is for 5,000 OH006-2000656 type J resistors manufactured by Ohmite for delivery by August 1, 1993. The lower portion of Figure 8 shows a response from Acme Supply, Inc., together with pricing, contact information, delivery and vendor notes.

Odom

The disclosure of Odom is directed to a network-based system for an exchange. A server system hosts transaction operations between sellers and buyers that list items and bid on listed

items via client terminals. The exchange is described as providing an interactive forum for sellers and purchasers.

Mandler

Mandler discloses a system and method for online transactions between sellers and buyers having no previous relationship with each other. The financial clearinghouse facilitating the transactional services may reduce an amount paid to a seller based on a risk analysis of the buyer. The financial clearinghouse transmits the payment amount to the seller and transmits an invoice to the buyer for the purchase price of a transaction. See Col. 3, lines 32-65.

Popolo

The disclosure of Popolo is directed to a method and system for matching sellers and buyers of metals, such as steel, on a spot market. The system permits sellers to post a detailed specification of metal items for sale and permits buyers to browse or search the posted inventory to locate items filling specific needs. The specification of an item for sale may be expressed in a variety of units of measure. The units of measure used by a seller in posting an item can be converted to units of measure desired by an interested buyer.

As described at Col. 9, lines 21-50 of the Popolo patent (cited by the Examiner), Popolo's system permits a seller to enter a numeric value for the asking price of an item and specify the unit of measure for that price. The example given by Popolo is "TOTAL WEIGHT: 23000.0000 pounds" for an "ASKING UNIT PRICE: 23.0877 \$/hundredweight." Popolo then states that the resulting "ASKING TOTAL VALUE" is simply calculated by multiplying the "TOTAL WEIGHT" by the "ASKING UNIT PRICE," after "normalizing" both values to a common unit of measure. The "normalization" provided by Popolo is simply a conversion of one unit of measure ("pounds") to another unit of measure ("hundredweight"). This conversion of units relies on static factors inherent in international standards of weights and measures.

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Brief Examples of Applications of the Present Invention

Embodiments of the present invention enable a buyer to receive and compare prices offered by sellers of commodity products. Sets of products offered by different sellers may have different evaluation parameters, yet with the present invention, a buyer can compare different product offerings in a meaningful way. A price comparison routine produces a comparison value that is calculated in reference to market price data. As will be discussed later herein, in terms of the claims, the "comparison value" is indicative of "a ratio of the quoted value and at least one metric value derived from the metric data", wherein the metric data "represents price data that is indicative of one or more market prices." Quotes from sellers containing similar but not identical products can be compared because the "comparison value" is expressible as a calculated percentage of market value for the products in the respective quotes.

Important to note is that market data is dynamic, and thus market prices for different product offerings can change over time. Market prices for some products may change more dramatically over time than for other products. The value relationships between different product offerings is thus in constant flux. Embodiments of the claimed invention enable a buyer to effectively compare the value of different product offerings at particular instances of time.

One exemplary embodiment is described in the specification at page 16, line 21 to page 17, line 13. In the example, a buyer sends out a request for quote (RFQ) requesting a lot of lumber consisting of five units of 2"×4"×8', two units of 2"×4"×14' and five units of 2"×4"×16'. The buyer then receives quotes from three sellers. Seller A responds with a tally of six units of 2"×4"×8', four units of 2"×4"×14' and three units of 2"×4"×16' for \$287 per thousand board feet ("MBF price"). Seller B responds with a lot of five units of 2"×4"×8', one unit of 2"×4"×14' and six units of 2"×4"×16' for \$283 per thousand board feet. Seller C responds with a lot of one unit of 2"×4"×8', five units of 2"×4"×14' and five units of 2"×4"×16' for \$282 per thousand board feet.

Suppose also that the market price for 2"x4"x8's is \$287.50, for 2"x4"x14's it is \$278.50 and for 2"x4"x16' it is \$288.

Viewing the MBF prices for the respective quotes is not particularly informative, given that certain lengths of lumber are more desirable and priced accordingly in the marketplace. By processing the quote from Seller A using routine 900 (FIGURE 9), we arrive at a total MBF of 152, giving a total quoted price of \$43,624. The selected metric price for the same types and quantity of lumber may be \$43,220; therefore the quoted price would have a percent of market value of 100.93%. Processing the quote from Seller B using routine 900, we arrive at a total MBF of 150 giving a total quoted price of \$42,450. The selected metric price for the same types and quantity of lumber however may be \$43,047; therefore the quoted price would have a percent of market value of 98.61%. Finally, processing the quote from Seller C using routine 900, we arrive at a total MBF of 158 giving a total quoted price of \$44,556. The selected metric price for the same types and quantity of lumber however may be \$44,835; therefore the quoted price would have a percent of market value of 99.38%. By looking at the percent of selected metric value, it is apparent that the price from Seller B is a better value, even though the MBF price from Seller C (\$282) is lower. As reflected in the methods of FIGURES 5-7, this price comparison process (sometimes referred to as a "normalization" process) allows users to compare inherently different offers having different quality and quantity values.

Another example provided in the specification at page 17, line 17 to page 18, line 4, demonstrates the ability of a buyer to analyze two different quotes from a seller with different products in the quotes. In this example, the buyer produces an RFQ listing the following items: one carload of Eastern SPF (ESPF) lumber having four units of 2"x 4"x 8', four units of 2"x 4"x 10', six units of 2"x 4"x 12', two units of 2"x 4"x 14', and six units of 2"x 4"x 16'. The vendor then responds with two different quotes with two different unit tallies and two different

prices. The first response lists a quote price of \$320 per thousand board feet and a slight modification of the tally provides four units of 2"x 4"x 8', four units of 2"x 4"x 10', six units of 2"x 4"x 12', three units of 2"x 4"x 14', and five units of 2"x 4"x 16'. The second response quotes per the requested tally at a price of \$322 per thousand board feet.

To display the quotes, a server 230 (FIGURE 2) produces a Web page similar to that displayed in FIGURE 8C, where the vendor's modified tally is displayed in highlighted text. The buyer can then view a summary metric comparison or select the hypertext link "View Calculation Detail," which invokes the server 230 to produce a Web page as shown in FIGURE 8D. The data produced by the server 230 compares the response to a selected metric of a different specie, Western SPF (WSPF), for items of same size, grade, and tally. The market price for same 2x4 tally of ESPF and WSPF are thus simultaneously compared. In an example with Eastern quoted at \$322 per thousand board feet, the Western metric (Random Lengths 6/26/2000 print price plus freight of \$80 as defined in Metric Manager) for same tally may be \$331.791. This metric comparison is also represented as Quote/Metric Value with the Eastern price representing .970490 or 97% of comparable Western product. Again, this price normalization or price comparison process produces a comparison value that allows users to evaluate inherently different offers having different quality and quantity parameters.

Issue 1: Whether Claims 1-17 Are Unpatentable Under 35 U.S.C. § 103(a) in View of Giovannoli, Odom, Mandler, and Popolo

Claim 1

Appellant asserts that the combination of Giovannoli, Odom, Mandler, and Popolo fails to disclose each and every element in Claim 1. In addition, appellant disputes the existence of a suggestion or motivation in the references to modify or combine them in the manner expressed by the Examiner. The Office Action dated November 10, 2004 (subject of the present appeal),

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refers to paragraphs 4-6 of the Office Action mailed November 6, 2003 (Paper No. 15), for the basis for rejecting the claims.

As a Preliminary Matter, Characterizations in the Office Action Regarding
Alleged Disclosure of the Prior Art Have Been Misstated

Prior to discussing the specific language of Claim 1, appellant wishes to point out that many statements set forth in the November 6, 2003 Office Action regarding alleged disclosure of the prior art are incorrect. For example, at Page 3, line 6, the Office Action asserts that Odom teaches "a clearinghouse response (Fig 5/530) to a buyer's risk rating (col. 2 lines 43-47)", though the cited passages of Odom teach nothing of the sort (nor is a risk rating even relevant to the claimed invention). The Office Action further asserts at Page 3, lines 13-14, that "Odom teaches allowing actual real world (market) events to take place affecting price (Fig 4/405)," though appellant sees nothing of the sort in Odom's disclosure. The referenced "real world events" indicate a physical exchange of objects, a credit card validation, etc., for triggering an external clearing of transactions. These events do not affect the negotiated price between the buyer and seller in Odom's system.

In yet another example, the Office Action asserts at Page 3, lines 16-17, that "Mandler teaches renegotiation of a price due to risk based discounting (col. 5 lines 6-17)." However, the referenced risk-based discounting is not a renegotiation of a price between a buyer and seller. Rather, it is merely a fee assessed against the seller by the financial clearinghouse that is facilitating the transaction. These portions of the Office Action will be raised again below in regard to dependent Claims 10-11.

Obviousness Under 35 U.S.C. § 103(a) Requires a Teaching of All Claim
Limitations and a Suggestion or Motivation to Modify or Combine the References

It is well-established that a *prima facie* case of obviousness is made only when the following criteria are met: (1) there is some suggestion or motivation to modify or combine the

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references; (2) there is a reasonable expectation of success; and (3) the combined references teach or suggest **all** claim recitations. *See In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). *See also*, M.P.E.P. § 2143. Appellant asserts that the November 10, 2004 Office Action, by incorporation of paragraphs 4-6 of the November 6, 2003 Office Action, fails to demonstrate that the combined references teach or suggest all of the limitations in Claim 1. Appellant further asserts that the Office Action fails to properly identify a suggestion or motivation in the references to modify or combine the references in the manner expressed by the Examiner. Therefore, appellant asserts that the Office Action failed to make a proper *prima facie* case of obviousness and, correspondingly, the 35 U.S.C. § 103(a) rejection of Claim 1 should be reversed.

Giovannoli, Odom, Mandler, and Popolo Fail to Teach "Receiving Metric Data...Indicative of One or More Market Prices" and "Generating At Least One Comparison Value"

As can be seen above, the November 6, 2003 Office Action generally demonstrates a loose reading of the prior art in an attempt to apply the prior art to the claims in the present application. Appellant, however, wishes to focus the Board's attention on the principal deficiency of the references, namely, that none of the cited references teach or suggest "receiving metric data from at least one source, wherein the metric data represents price data that is indicative of one or more market prices" and "generating at least one comparison value, wherein the comparison value is indicative of a ratio of the quoted value and at least one metric value derived from the metric data" as claimed in Claim 1.

The November 6, 2003 Office Action alleges that "Popolo teaches receiving metric data from one source (Fig 7/190) and generating a normalized price data value (col. 9 lines 21-50) for a commodity having size and type parameters (Panel #1) (col. 11 lines 47-60)(Panel 10)." (See bottom of Page 3 to top of Page 4 of the Office Action). As explained in greater detail below,

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Popolo, in fact, does not receive metric data and generate a normalized price data value, or "comparison value," as claimed in the present application. Claim 1 dictates that the "comparison value" is calculated by the use of two different values: (1) metric data that represents price data indicative of one or more market prices; and (2) a quoted value contained in a price data set received from a seller agent. The ratio of the two values varies with changes in the (1) metric data even if the (2) quoted value provided by the seller agent remains constant. The claimed method thus allows buyers to evaluate different quotes with respect to a reference point defined by the metric data, such metric data being entirely independent of and exogenous to the seller's price data set.

An illustration of this claimed method is shown in Figure 9, which is described in the specification at pages 16-18. As described in the specification, the calculation of the "comparison value" involves the combination of (1) metric data received from a source, e.g., industry specific reporting services such as Crowes™, or Random Lengths™, or the Chicago Mercantile Exchange (step 925), and (2) a quoted value in a price data set received from a seller (step 905). The partial paragraph at the top of page 18 of the specification illustrates a specific example in which one quoted value is indicated as being 97% of the market value of a comparable product. The comparison value is variable in nature because the metric data (which represents price data indicative of one or more market prices of the products listed in the quote) may fluctuate.

The method of Claim 1 using the recited combination of data is not taught or suggested by Popolo, or any of the other cited references. Indeed, the cited references do not even contemplate a method where a comparison value is calculated using the recited types of data ("metric data from at least one source . . . indicative of one or more market prices" and a "price data set from said seller agent").

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Popolo uses the term "normalizing" in only one circumstance in reference to converting one unit of measure to another unit of measure. A simple conversion of one unit of measure to another unit of measure does not anticipate nor render obvious the claim limitation of "generating at least one comparison value, wherein the comparison value is indicative of a ratio of the quoted value and at least one metric value derived from the metric data." Moreover, a conversion of units has nothing to do with taking a product quote and providing a buyer with a calculated percentage of market value of the products in the quote ("ratio of the quoted value and at least one metric value"). One advantage of the claimed invention is that it allows a buyer to compare inherently different offers having different product quantities and qualities and determine which offer presents a better value to the buyer.

In Popolo, given the same set of inputs (a unit of measure and a conversion factor), the conversion process will always result in the same output. In contrast, with the present invention, given the same set of inputs (a product specification and offer price), the claimed comparison process can produce different (or even opposite) results at different points in time based on dynamic changes in the metric data.

Because none of the cited references teach or suggest "receiving metric data from at least one source, wherein the metric data represents price data that is indicative of one or more market prices" and "generating at least one comparison value, wherein the comparison value is indicative of a ratio of the quoted value and at least one metric value derived from the metric data" as claimed in Claim 1, Claim 1 is patentable over the cited art. Appellant submits that the 35 U.S.C. § 103(a) rejection of Claims 1 is improper, and requests that the Board reverse the rejection.

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There is No Suggestion or Motivation to Modify or Combine the Disclosures of
Giovannoli, Odom, Mandler, and Popolo in the Manner Expressed by the
Examiner

Appellant further asserts that the Office Action fails to properly demonstrate the presence of a suggestion or motivation in the references to modify or combine the references in the manner expressed by the Examiner. At page 5, lines 1-7, of the November 6, 2003 Office Action, the Examiner alleges: "[I]t would have been obvious to one of ordinary skill in the art at the time of the invention to combine Giovannoli in view of Odom in view of Mandler and further in view of Popolo to teach all of the disclosure. The motivation to combine is to teach a transactional system between sellers and buyers that are unrelated which includes a clearinghouse that makes a real time risk assessment of the buyers and which determines a credit line for each buyer and which may be applied to commodities trading as enunciated by Popolo (Col. 1 lines 46-60)." However, as can be seen from Claim 1, the notion of a "clearinghouse that makes a dynamic real time risk assessment" and which "determines a credit line for each buyer" has nothing to do with the subject matter in Claim 1, and therefore cannot serve as a motivation to combine the references to render Claim 1 obvious. For this additional reason, the Office Action fails to make a *prima facie* case of obviousness. The 35 U.S.C. § 103(a) rejection of Claim 1 should be reversed.

Conversion of Prices Quoted in Different Currencies, as Raised by the
November 10, 2004 Office Action, is Irrelevant to the Claimed Invention

Notwithstanding the above, the November 10, 2004 Office Action continues to miss the mark by asserting that the claimed invention involves nothing more than a "step of normalizing", and equates the claimed invention to an "old and well known" process exemplified by converting a price in one currency to another currency. (See paragraph 4 of the Office Action). The use of prevailing exchange rates for currency conversion, however, has no bearing on the claimed invention.

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In currency conversion, one starts with a quantity of currency of type A (*e.g.*, 10 U.S. Dollars), and the output of the process is a quantity of currency of a different type B (*e.g.*, 8.5 Euros). In contrast, in the claimed invention, one starts with two different values for the same commodity set A (an offered price and a market price) and with those values, one produces an output that is a ratio. The ratio (*i.e.*, "comparison value") for one commodity set can be used to compare the relative value of the offered price against an offered price for another commodity set.

Appellant respectfully submits that, in raising the argument regarding currency conversion, the Examiner has either misread or misunderstood the claimed feature of "generating at least one comparison value, wherein the comparison value is indicative of a ratio of the quoted value and at least one metric value derived from the metric data".

Claims 2-12

Claims 2-12 ultimately depend from Claim 1 and therefore, by reference, incorporate all of the limitations of Claim 1. Claims 2-12 are thus patentable over the cited art for the same reasons as Claim 1. Furthermore, appellant submits that dependent Claims 2-12 are also patentable for the additional subject matter recited therein.

For example, Claim 10 indicates that the price data set received from a seller agent may further include an adjusted price and an adjusted quantity. As discussed in the specification at page 10, lines 6-10, a "vendor (*i.e.*, seller) has the capability to modify any of the information that the buyer submitted in a request." For example, the vendor may edit the quantity values for various units set forth in a tally. This allows the vendor to adjust the buyer's request according to the vendor's inventory, best means of transportation, etc. Applicant has carefully considered the

four cited references and does not find any disclosure in the references that teach this additional subject matter.

As another example, Claim 11 further defines the method as "receiving an additional price data set from the seller agent, wherein the additional price data is a result from a renegotiated price." The November 6, 2003 Office Action cites to Mandler as allegedly teaching "renegotiation of a price due to risk based discounting." See page 3, lines 16-17 of the Office Action. The risk-based discounting taught by Mandler has nothing to do with receiving an additional price data set from a seller agent or renegotiation of the price. Mandler merely teaches a reduction in the amount remitted to the seller due to risks a third party clearinghouse is taking on to collect a purchase amount from a buyer. Mandler fails to teach the subject matter set forth in Claim 11, and none of the other cited references cures this deficiency. Accordingly, Claim 11 is patentable over the cited art.

Claims 13-17

Claims 13-17 are dependent from Claim 1 and are patentable for the same reasons discussed above with respect to Claim 1. Moreover, Claims 13-17 include further definitions of a method of generating a comparison value. For instance, Claim 13 is directed to a method of "applying a metric transform to said price data set to create at least one comparison value." Claims 14-15 and 16-17 are directed to specific embodiments of a comparison process that includes steps such as calculating a size total based on size parameters of items, retrieving a metric price data set comprising comparable price per unit data, creating a market price total, and comparing the market price total by a price total from a price data set, thereby creating the claimed "comparison value." Applicant respectfully submits that the four references cited by the Examiner fail to mention or suggest subject matter that is related to these aspects of applicant's

claimed invention. Again, the Office Action has failed to set forth a *prima facie* case of obviousness, and therefore Claims 13-17 should be allowed.

Issue No. 2: Whether Claims 18-31 Are Unpatentable Under 35 U.S.C. § 103(a) in View of Giovannoli, Odom, Mandler, and Popolo

Claim 18

The Office Action dated November 6, 2003, rejected all of Claims 1-36 together in one paragraph. While applicant acknowledges similar subject matter shared between Claims 18-27 and Claims 1-12, appellant submits that Claims 18-27 encompass a different scope of subject matter and therefore should be considered separately from Claims 1-12. Nevertheless, as the Examiner has treated all of the claims together, appellant responds similarly by asserting that Claims 18-27 are patentable over the Giovannoli, Odom, Mandler, and Popolo references for the same reasons discussed above with respect to Claims 1-12.

Claim 18 is directed to a method for providing services that includes generating and communicating at least one comparison value for depiction on a buyer client computer. Part of the claimed method includes "receiving metric data from at least one source, wherein the metric data represents price data that is indicative of one or more market prices" and "generating at least one comparison value, wherein the comparison value is indicative of a ratio of the at least one quoted value and at least one metric value derived from the metric data." Appellant has carefully considered the four cited references and does not find any teaching or suggestion in the references of these limitations of Claim 18. By failing to teach or suggest all of the limitations in Claim 18, the four cited references do not provide a proper basis for rejecting the claim as being obvious. The 35 U.S.C. § 103(a) rejection of Claim 18 is improper and should be reversed.

Claims 19-27

Similarly, as noted above, Claims 19-27 include additional subject matter that further distinguishes the claimed invention over the prior art. For example, Claims 24 and 25 include

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subject matter similar to that of Claims 10 and 11, which as noted above is not taught or suggested by the cited art. The rejection of Claims 19-27 should be reversed.

Claims 28-31

Claims 28-31 depend from Claim 18 and thus are patentable for the same reasons discussed above with respect to Claim 18. Moreover, as with Claims 13-17, Claims 28-31 are directed to various embodiments of the invention that further define the method of Claim 18. Generally stated, these additional embodiments include steps such as calculating a size total based on size parameters of items, retrieving a metric price data set comprising comparable price per unit data, creating a market price total, and comparing the market price total by a price total from a price data set, thereby creating the claimed "comparison value." The four references cited by the Examiner fail to teach or suggest these additional limitations and thus cannot render Claims 28-31 obvious.

Issue No. 3: Whether Claims 32-36 Are Unpatentable Under 35 U.S.C. § 103(a) in View of Giovannoli, Odom, Mandler, and Popolo

Claims 32-36

Claims 32-36 are directed to an article of manufacture comprising a computer-readable medium. The computer-readable medium has computer-executable instructions for providing services, which, when executed by a processor, result in a number of actions including "receiving metric data from at least one source, wherein the metric data represents price data that is indicative of one or more market prices" and "generating at least one comparison value, wherein the comparison value is indicative of a ratio of the quoted value and at least one metric value derived from the metric data." Appellant has considered the cited references and finds no teaching or suggestion of these limitations of Claim 32. Having failed to teach or suggest all of the limitations of Claim 32, the cited references do not provide a proper basis for rejecting

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Claim 32 as being obvious. The 35 U.S.C. § 103(a) rejection of Claim 32 is improper and should be reversed.

As with the other dependent claims in this application, Claims 33-36 include additional subject matter that further distinguishes the claimed computer-readable medium over the prior art. The rejection of Claims 33-36 should also be reversed.

Conclusion

In view of the foregoing remarks, appellant submits that pending Claims 1-36 are in condition for allowance. The Examiner's reading and application of the Giovannoli, Odom, Mandler, and Popolo references to reject Claims 1-36 under 35 U.S.C. § 103(a) is erroneous. A reversal of the Examiner's claim rejections and allowance of the claims is respectfully requested.

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VIII. CLAIMS APPENDIX

1. In an arrangement comprising a plurality of agents connected to a network, said plurality of agents including at least one server, at least one buyer agent, and at least one seller agent, a method for calculating price data, comprising:

receiving at least one request for quote from said buyer agent, wherein said request for quote includes a product specification data set;

transmitting the product specification data set to at least one seller agent;

receiving a price data set from said seller agent, wherein the price data set contains at least one quoted value, and wherein information in said price data set is responsive to the product specification data set;

receiving metric data from at least one source, wherein the metric data represents price data that is indicative of one or more market prices;

generating at least one comparison value, wherein the comparison value is indicative of a ratio of the quoted value and at least one metric value derived from the metric data; and

communicating at least one comparison value to at least one output.

2. The method of Claim 1, further comprising communicating at least one comparison value to said buyer agent.

3. The method of Claim 1, further comprising providing a browsable display describing at least one service and features for allowing a buyer agent to provide a request for quote.

4. The method of Claim 1, wherein the product specification data set includes a delivery date set at a future time.

5. The method of Claim 1, further comprising:
receiving a buy notice from said buyer agent; and
transmitting a purchase order to at least one said seller agent.

6. The method of Claim 1, further comprising:
receiving a plurality of product specification data sets from at least two buyer agents; and
combining said plurality of product specification data sets, thereby creating one request for quote.

7. The method of Claim 1, wherein said product specification data set includes information related to a buyer, a grade, a quantity, a tally, a method of shipment, and a ship date.

8. The method of Claim 1, wherein the product specification data set comprises a plurality of quantity values for a number of like commodity items having different size parameters, a description of at least one commodity item, and a description of a delivery method.

9. The method of Claim 1, wherein said price data set includes information to identify a seller, a quote price, shipment, and payment terms.

10. The method of Claim 9, wherein said price data set further includes an adjusted price and an adjusted quantity.

11. The method of Claim 1, further comprising receiving an additional price data set from the seller agent, wherein the additional price data is a result from a renegotiated price.

12. The method of Claim 1, further comprising storing at least one comparison value in a database communicatively connected to the server.

13. The method of Claim 1, wherein generating at least one comparison value includes the step of applying a metric transform to said price data set to create at least one comparison value.

14. The method of Claim 1, wherein said product specification data set comprises a plurality of quantity values for a number of items having different size parameters and wherein the generation of at least one comparison value includes:

calculating a size total value based on said size parameters;

retrieving a price total from one of said price data sets;

retrieving a metric price data set, wherein said metric price data set comprises a comparable price per unit of one of said items;

multiplying said comparable price per unit of said metric price data set by said calculated size total value, thereby creating an adjusted market price total;

calculating a summed market price total by summing one or more adjusted market price totals; and

comparing said summed market price total by said price total, thereby creating at least one comparison value.

15. The method of Claim 14, wherein comparing said summed market price total by said price total includes determining a ratio by dividing said price total by said summed market price total, thereby creating at least one comparison value.

16. The method of Claim 1, wherein said product specification data set comprises a plurality of quantity values for a number of items, each having different size parameters and type parameters, and wherein the generation of at least one comparison value includes:

for each item having similar size parameters and type parameters, calculating a size total value based on a summation of said size parameters;

retrieving a price total from one of said price data sets;

for each item having similar size parameters and type parameters, retrieving a metric price data set, wherein said market price data set comprises a comparable price per unit of at least one of said items;

multiplying said comparable price per unit by said size total value, thereby creating a market price total;

calculating a summed market price total from the summation of one or more said market price totals; and

comparing said summed market price total by said price total, thereby creating at least one comparison value.

17. The method of Claim 16, wherein comparing said summed market price total by said total type price includes determining a ratio by

dividing said total type price by said summed market price total, thereby creating at least one comparison value.

18. In an arrangement comprising a plurality of computers connected to a network, said plurality of computers including at least one server, at least one buyer client computer, and a plurality of seller client computers, a method for providing services, comprising:

providing a browsable display describing at least one service and features for allowing a buyer associated with said buyer client computer to provide a request for quote;

receiving at least one request for quote from said buyer client computer, wherein said request for quote includes a product specification data set;

transmitting said product specification data set to at least one of said plurality of seller client computers;

receiving a plurality of price data sets from said plurality of seller client computers, wherein the price data sets contain at least one quoted value, and wherein said plurality of price data sets are responsive to said product specification data set;

receiving metric data from at least one source, wherein the metric data represents price data that is indicative of one or more market prices;

generating at least one comparison value, wherein the comparison value is indicative of a ratio of the at least one quoted value and at least one metric value derived from the metric data; and

communicating at least one comparison value for depiction on said buyer client computer.

19. The method of Claim 18, further comprising:
receiving a buy notice from said buyer client computer; and
transmitting a purchase order to one of said seller computers of said plurality of seller client computers.

20. The method of Claim 18, further comprising:
receiving a plurality of product specification data sets from said plurality of buyer client computers; and
combining said plurality of product specification data sets, thereby creating one request for quote.

21. The method of Claim 18, wherein said product specification data set includes information related to a buyer, said request for quote grade, quantity, tally, a method of shipment, and a ship date.

22. The method of Claim 18, wherein the product specification data set comprises a plurality of quantity values for a number of like commodity items having different size parameters, a description of at least one commodity item, and a description of a delivery method.

23. The method of Claim 18, wherein said price data set includes information to identify a seller, a quote price, shipment, and payment terms.

24. The method of Claim 23, wherein said price data set further includes an adjusted price and an adjusted quantity.

25. The method of Claim 18, further comprising receiving an additional price data set from the seller client computer, wherein the additional price data is a result from a renegotiated price.

26. The method of Claim 18, further comprising storing at least one comparison value in a database communicatively connected to the server.

27. The method of Claim 18, wherein the generation of at least one comparison value includes applying a metric transform to said price data set to create at least one comparison value.

28. The method of Claim 18, wherein said product specification data set comprises a plurality of quantity values for a number of commodity items having different size parameters and wherein the generation of at least one comparison value includes:

calculating a size total value based on said commodity size parameters;

retrieving a price total from one of said price data sets;

retrieving a metric price data set, wherein said metric price data set comprises a comparable price per unit of one of said commodity items;

multiplying said comparable price per unit by said calculated size total value, thereby creating an adjusted market price total;

calculating a summed market price total by summing one or more adjusted market price totals; and

comparing said summed market price total by said price total, thereby creating at least one comparison value.

29. The method of Claim 28, wherein comparing said summed market price total by said price total includes determining a ratio by dividing said price total by said summed market price total, thereby creating at least one comparison value.

30. The method of Claim 18, wherein said product specification data set comprises a plurality of quantity values for a number of commodity items, each having different size parameters and type parameters, wherein the generation of at least one comparison value includes:

for each commodity item having similar size parameters and type parameters, calculating a size total value based on a summation of said commodity size parameters;

retrieving a price total from one of said price data sets;

for each commodity item having similar size parameters and type parameters, retrieving a metric price data set, wherein said market price data set comprises a comparable price per unit of at least one of said commodity items;

multiplying said comparable price per unit by said size total value, thereby creating a market price total;

calculating a summed market price total from the summation of one or more said market price totals; and

comparing said summed market price total by said price total, thereby creating at least one comparison value.

31. The method of Claim 30, wherein comparing said summed market price total by said total type price includes determining a ratio by dividing said total type price by said summed market price total, thereby creating at least one comparison value.

32. An article of manufacture comprising a computer-readable medium having computer-executable instructions for providing services, which, when executed by a processor, result in:

providing a display describing at least one service on a computing device and features for allowing at least one buyer client computer to provide a request for quote;

receiving at least one request for quote from said buyer client computer, wherein the request for quote includes a product specification data set;

transmitting the product specification data set to a plurality of seller client computers;

receiving a plurality of price data sets from said plurality of seller client computers, wherein the price data set contains a quoted value, and wherein said plurality of price data sets are responsive to the product specification data set;

receiving metric data from at least one source, wherein the metric data represents price data that is indicative of one or more market prices;

generating at least one comparison value, wherein the comparison value is indicative of a ratio of the quoted value and at least one metric value derived from the metric data; and

generating an output of at least one comparison value for depiction on said buyer client computer.

33. The article of Claim 32, wherein the computer-executable instructions, when executed, further result in:

receiving a buy notice from said buyer client computer; and
transmitting a purchase order to one or more of said seller computers of said plurality of seller client computers.

34. The article of Claim 32, wherein the computer-executable instructions, when executed, further result in:

receiving a plurality of product specification data sets from a plurality of buyer client computers; and
combining said plurality of product specification data sets, thereby creating one request for quote.

35. The article of Claim 32, wherein the computer-executable instructions, when executed, further result in receiving an additional price data set from the seller client computer, wherein the additional price data is a result from a renegotiated price.

36. The article of Claim 32, wherein the computer-executable instructions, when executed, further result in storing at least one comparison value in a database communicatively connected to the server.

IX. EVIDENCE APPENDIX

None.

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X. RELATED PROCEEDINGS APPENDIX

None.

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